

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership Rules)	
and Other Rules Adopted Pursuant to Section 202)	
of the Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
To: The Commission		

COMMENTS OF
NEXSTAR BROADCASTING GROUP, L.L.C. AND
QUORUM BROADCAST HOLDINGS, LLC

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SUMMARY

Nexstar Broadcasting Group, L.L.C. (“Nexstar”) and Quorum Broadcast Holdings, LLC (“Quorum”) submit these joint comments in the Commission’s broadcast ownership rulemaking proceeding, specifically with regard to the Local TV Multiple Ownership Rule. Nexstar and Quorum urge the Commission to allow common ownership of two commercial television stations in all markets with four or more commercial television stations.

Nexstar and Quorum, through subsidiaries, own and operate a total of 24 television broadcast stations, all in medium to small markets. With the exception of one of their markets, are all too small to take advantage of the common ownership provisions of the current Local TV Multiple Ownership Rule. Because Nexstar and Quorum have been unable to take advantage of the current rule, each has entered into various agreements with other stations in some of their markets which are designed to achieve some cost-savings with regard to news programming and technical maintenance. In these comments, Nexstar and Quorum provide information with respect to their experiences, in order to help the Commission understand how local duopolies can provide better service to the public while not harming the Commission’s policy goals of diversity, competition and localism.

The media marketplace is amazingly diverse, even with the current levels of consolidation. Over the past several years, the number of radio and TV stations has increased; cable, DBS, DARS and Internet access have all expanded; and daily and weekly local newspapers remain readily available. Relaxation of the Local TV Multiple Ownership Rule will not impact this vast diversity of available media and likely will only increase it. In those markets where Nexstar and Quorum have agreements with second stations, the parties have initiated new newscasts, expanded coverage with existing newscasts and made technical improvements to their

newscasts by adding doppler radar systems or satellite uplink trucks. Further, relaxing the Local TV Multiple Ownership Rule to allow common ownership of two TV stations will not harm existing market diversity because there is very little incentive for broadcasters to broadcast duplicative programming.

The Commission can relax the Local TV Multiple Ownership Rule without harming competition. Viewers, programmers and advertisers all have multiple media choices, not just local broadcast television. For example, viewers may choose from broadcast television, DBS, cable service, videos, DVDs and many other entertainment options. Programmers and advertisers can work with other television stations and cable. Advertisers can utilize newspaper and radio. Nexstar and Quorum urge the Commission to leave any “competition analysis” to the Department of Justice and Federal Trade Commission - - agencies well-equipped to handle such review.

The Commission’s policy of localism also will remain strong even with relaxation of the Local TV Multiple Ownership Rule. Nexstar and Quorum believe that local programming would increase under relaxation of the rule because news and public affairs programming are the type of programs that attract viewers to stations.

If the Commission relaxes the Local TV Multiple Ownership Rule to allow common ownership of two commercial television stations in markets with four or more commercial television stations, both the public and broadcasters will benefit. The public will receive increased programming service and broadcasters will remain viable and competitive with other media, and will be better able to complete the transition to full-power DTV.

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Nexstar Broadcasting Group, L.L.C. (“Nexstar”) and Quorum Broadcast Holdings, LLC (“Quorum”), by their attorneys, respectfully submit these joint comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding. Specifically, Nexstar and Quorum provide comments with regard to the Local TV Multiple Ownership Rule, Section 73.3555(b) of the Commission’s rules, and urge that the Commission allow common ownership of two commercial television stations in all markets with four or more operating commercial television stations.¹

¹ Currently, the Local TV Multiple Ownership Rule prevents one entity from owning, operating, or controlling two television stations in the same DMA unless (i) the Grade B contours of the stations do not

Under the Commission's current rules, common ownership of two television stations can exist only in the largest markets. Allowing common ownership of two stations in all markets with four or more stations will allow medium and small market TV broadcasters to take advantage of the same efficiencies of operation that many large market broadcasters currently can achieve, which in turn will allow medium and small market broadcasters to better serve their communities. In these comments, Nexstar and Quorum provide examples of how local duopolies can result in better local television service to the public.

I. BACKGROUND.

Nexstar, through subsidiaries, owns and operates fourteen TV stations in thirteen DMAs. Quorum, through subsidiaries, owns and operates ten television stations in ten DMAs.² All 24 of the Nexstar/Quorum stations are in DMAs 52 and below, and 17 are in DMAs 116 to 189.³ In only one of their markets does either company currently own and operate two television broadcast stations -- Nexstar owns and operates WCIA, Champaign, Illinois and WCFN, Springfield, Illinois, both in the Champaign-Springfield-Decatur DMA.

overlap or, (ii) at the time an application is filed, at least one of the stations is not ranked among the top four stations in the DMA and at least 8 independently owned and operating full-power television stations would remain post merger in the DMA in which the communities of license are located. *See* 47 C.F.R. § 73.3555(b).

² In these comments, "Nexstar" and "Quorum" includes their respective subsidiaries. Voting control of Nexstar is held by ABRY Broadcasting Partners II, L.P. and its affiliated company, ABRY Broadcast Partners III, L.P. Voting control of Quorum is held by ABRY Broadcast Partners III, L.P.

³ Market rankings are from *Television and Cable Factbook*, Stations Volume No. 70, 2002 Edition, Warren Publishing, Inc. Quorum's station WHAG-TV, Hagerstown, Maryland, is technically in DMA 8, the Washington D.C. DMA. However, in 1998, the Commission recognized that this station does not provide service to the Washington, D.C. metropolitan area and has categorized the station as a "remaining market station" for regulatory fee purposes.

Because the Local TV Multiple Ownership Rule generally prevents Quorum and Nexstar from owning and operating more than one station in their markets, each company has entered into agreements with other in-market stations in some of their markets in order to achieve some of the efficiencies of operation that could be achieved through common ownership and operation of a second station. Nexstar has entered into agreements with stations owned by Mission Broadcasting, Inc. (“Mission”) in Wichita Falls, Texas; Joplin, Missouri; and Scranton, Pennsylvania, and with an affiliate of Sinclair Broadcasting, Inc. in Peoria, Illinois – markets in which Nexstar already owns and operates a television station. These agreements allow Nexstar to provide certain services, including news production and technical maintenance, to Mission’s and Sinclair’s stations.⁴ Nexstar also has a grandfathered time brokerage agreement with WFXP, Erie, Pennsylvania, pursuant to which Nexstar, which has a station of its own in Erie, provides programming and other services to WFXP.

Quorum has entered into agreements with Mission Broadcasting of Amarillo, Inc. and affiliates of VHR Broadcasting, Inc., under which Quorum provides services, including news production and technical maintenance, to stations in Amarillo and Lubbock, Texas and Springfield, Missouri – markets in which Quorum also owns and operates a television station. Quorum also has a grandfathered time brokerage agreement with KHMT, Hardin, Montana (in the Billings market) pursuant to which Quorum, which owns a station the same market, provides programming and other services to KHMT.

⁴ All news programming provided by Nexstar or Quorum under the various agreements comprises less than fifteen percent of the second station’s programming, so the agreements are not considered time brokerage agreements under the Commission’s rules and policies.

The various agreements described above have allowed Quorum and Nexstar and the other in-market stations to achieve certain operating efficiencies that are unavailable to a single station owner, resulting in better service to the community. Although these arrangements allow Nexstar and Quorum to achieve some efficiencies, they do not allow the full cost savings that would be possible through the ownership of both stations. Nonetheless, because of the extent to which Nexstar and Quorum are involved in these quasi-duopolies, they are in the unique position of being able to provide the Commission with actual examples of how real duopolies in medium and small markets can improve local TV service to the viewing public.

For example, the broker who sold WYOU, Scranton, Pennsylvania to Nexstar in 1996 suggested that the only way to operate WYOU profitably would be to eliminate local news. In January 1998, Nexstar sold WYOU to Mission and bought a second station, WBRE-TV, in the Wilkes Barre-Scranton DMA. Upon consummation of these acquisitions, Mission and Nexstar entered into a shared services agreement under which Nexstar produces the news for its own station, WBRE-TV, and for Mission's station, WYOU. Today, both WBRE-TV and WYOU provide vibrant, high-quality news programming to Scranton-Wilkes Barre area viewers, with both stations providing a greater number of newscasts than either station would be able to provide with separate news operations. The mountainous terrain in the Wilkes Barre-Scranton market impairs the use of microwave remote pick-up facilities for on-the-spot news coverage, but the savings realized from the Nexstar/Mission shared services agreement have made it economically feasible for Nexstar to purchase a satellite uplink truck so that both stations can provide live coverage of important local events.

Nexstar's various agreements with Mission and Sinclair also allow for greater community participation by the stations involved, including broadcasts of parades, sponsorship of political debates, and support for charities such as the Children's Miracle Network Telethon, the Leukemia Light the Night Project, Race for the Cure and Toys for Tots. In addition, several of the non-Nexstar-owned stations have been able to begin broadcasting additional local programming such as *Sunday Live with Jim McNulty* in Wilkes Barre-Scranton, *Missouri Southern University Football Coaches Show* in Joplin, and live local church services in Wichita Falls.⁵

In the markets where Quorum has agreements with other stations, the communities and viewers also have benefited through Quorum's ability to provide news production and engineering services on behalf of a second station. For example, in Lubbock, Texas (DMA #148), where Quorum owns KLBK-TV and provides services to VHR-owned KAMC-TV, the two stations share a larger and stronger news department than either could justify separately. The stations collectively broadcast 35 hours of local news programming each week and the combined news department fields a larger number of reporter/photographer teams, allowing coverage of more stories. Because of the shared services agreement, Quorum could justify financially the purchase of a real-time live doppler weather radar system while doubling the stations' number of meteorologists – leading to better severe weather coverage in the heart of “Tornado Alley.” In Amarillo, Texas, Mission-owned KCIT was able to introduce a 9:00 p.m. newscast as well as broadcast additional local programming. In Hardin, Montana, VHR-owned KHMT also initiated a 9:00 p.m. newscast and is the only local station which reaches several Native

⁵ See Appendix A hereto for a more detailed listing of the benefits achieved under the various agreements in each market.

American reservations with over-the-air local news. In addition to the on-air gains achieved through the various agreements, Quorum's agreements also support greater community participation by the stations involved, including sponsorship and partnership with the March of Dimes, Toys for Tots, Habitat for Humanity, Meals on Wheels and Amber Alerts.⁶

These examples illustrate the kinds of programming enhancements that can be afforded where some operations in a single market are combined. While Quorum and Nexstar have been able to invest profitably in enhanced programming in their "quasi-duopoly" markets, their investment in those markets has not been as great as it could have been if they owned both stations.

II. RELAXATION OF THE LOCAL TV OWNERSHIP RULE WILL NOT HARM THE COMMISSION'S DIVERSITY, COMPETITION AND LOCALISM POLICIES.

The Commission seeks comment how it can achieve its goals of diversity, competition and localism in local television markets by means other than with the current local duopoly restrictions. Nexstar and Quorum submit that allowing broadcasters to own more than one TV station in markets with four or more television stations will enhance service to local markets while not unduly affecting diversity, competition or localism.

A. Diversity.

Today, the media market is amazingly diverse. There are 26,234 broadcast stations;⁷ more than 65 percent of all television households subscribe to cable;⁸ there are

⁶ *Id.*

⁷ See http://www.fcc.gov/mb/bureau_chief/fy2002st.doc.

more than 17 million DBS subscribers;⁹ more than 56 percent of U.S. households have access to the Internet;¹⁰ there are more than 1,400 daily and 7,700 weekly newspapers;¹¹ and more than 140,000 DARS subscribers.¹² Even the smallest markets have access to a wide variety of news sources. For example, the Altoona, Pennsylvania radio market (radio market #253) has access to 23 media outlets, including 20 radio and television outlets owned by 12 different owners and cable TV.¹³ In Nexstar's smallest DMA (St. Joseph, Missouri), there are six radio and television stations and, of course, cable TV service.¹⁴ The market also has a daily newspaper – the St. Joseph News-Press. And although Nexstar cannot provide precise numbers of subscribers, Nexstar is certain St. Joseph has DBS subscribers as well as readily available DARS and Internet access. Quorum's smallest DMA (Billings, Montana) has 23 radio and television stations,¹⁵ cable TV and the Billings Gazette, a daily newspaper. Quorum also is certain that Billings has DBS subscribers and DARS and Internet access.

⁸ See *Broadcast Television, Survivor in a Sea of Competition*, OPP Working Paper Series No. 37, p. 45, Jonathan Levy, Macelino Ford-Livene and Anne Levine, September 2002 ("Paper 37"). According to the NPRM, there are more than 230 national cable programming networks available to cable subscribers. *NPRM* at ¶ 25.

⁹ *Paper 37* at p. 51.

¹⁰ *Id.* at p. 68.

¹¹ *NPRM* at ¶ 27.

¹² *NPRM* at ¶ 26.

¹³ See *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)*, by Scott Roberts, Jane Frenette and Dione Stearns, September 2002 ("Working Group Study 1"). Nexstar and Quorum presume that this market has DBS and Internet subscribers as well as DARS access.

¹⁴ See *Broadcasting and Cable Yearbook*, 2003-2003 Edition.

¹⁵ *Id.*

1. Viewpoint Diversity.

The NPRM states that the Commission is fully committed to preserving viewpoint diversity ensuring that the public has access to a wide range of diverse opinions. Nexstar and Quorum believe that viewpoint diversity will not suffer if the Commission relaxes the Local TV Multiple Ownership Rule to allow ownership of two stations by the same owner in markets with four or more stations. Under Nexstar's and Quorum's various operating agreements, viewpoint diversity has increased.

Under Nexstar's agreements in Wilkes Barre-Scranton, Joplin, Erie and Peoria, Nexstar currently produces news for its own station and the Mission or Sinclair station in the market. Although the stations share some content, each station also includes news content which is unique to that station. Without the initiation of news on Sinclair's Peoria station and the retention of news on Mission's WYOU, viewpoint diversity would be reduced in both markets. In addition, in Wilkes Barre-Scranton and Joplin, although the Nexstar-owned and Mission-owned stations share a single news director, each station has its own management-level employee to ensure that the news broadcast over his/her respective station is focused on the needs of that station's viewers. Even in Erie, where Nexstar programs WFXP under a time brokerage agreement, there is a separate producer who works with WFXP's anchor to determine the content of its newscasts. In fact, Nexstar works diligently to maintain separate identities for the newscasts for all of the stations for which it produces news, in order to attract diverse viewership. To do otherwise would only reduce viewership of both newscasts and alienate viewers.

Quorum also maintains a high-level of viewpoint diversity with respect to its own stations and the stations for which it provides news production in the Lubbock and

Amarillo, Texas, Springfield, Missouri and Billings, Montana markets. Although stations may share breaking news items, even these stories may be told differently on the second in-market station. For example, in Lubbock, KAMC's newscasts are much more hard-hitting than the news broadcast on KLBK. Moreover, Quorum's investigative news reporting is done for one specific station only. In all of Quorum's markets, in which it has arrangements with other stations, viewpoint diversity has increased due to the increased number of stories covered, the larger number of reporters in the field, and the overall depth of coverage of local news in each market.

2. Outlet Diversity.

Relaxation of the Local TV Multiple Ownership Rule also will not markedly affect outlet diversity because a variety of local media owners will continue to remain in any given market even if one owner is allowed to own more than one television station. There will still remain multiple radio station owners, at least one cable owner or other multichannel video programming distributor, likely a daily or weekly newspaper owner and, depending on the size of the DMA, one or more additional television station owners. For example, allowing one owner to own two television stations in Myrtle Beach, South Carolina (radio market #169) has resulted in 29 radio stations owned by 16 different owners, six television stations owned by four owners, plus cable TV and a daily newspaper, the Sun News.¹⁶

¹⁶ *Working Group Study 1*, Tables 3-4. Nexstar notes that in Joplin, Missouri, allowing it to own its station and the station with which it partners would leave 22 radio stations owned by nine different owners, four television stations owned by three owners, plus cable TV, and a daily newspaper, the Joplin Globe. In Amarillo, Texas, allowing Quorum to own its station and the in-market station with which it partners would leave 27 radio stations owned by 13 different owners, eight television stations owned by six owners (one owner already owns two stations pursuant to a satellite waiver), plus cable TV, and the Amarillo Daily News/Amarillo Globe Times, a daily newspaper. (Radio and television stations in each market were obtained from *Broadcasting and Cable Yearbook*, 2003-2003 Edition; current ownership was determined through the Media Bureau's CDBS as of December 26, 2002.)

Nexstar and Quorum also believe that reducing outlet diversity by allowing one owner to own two TV stations in a market will not impact viewpoint or program diversity because an owner has incentive to provide differing information and to program its stations for maximum diversity. As shown by the radio industry, consolidated outlet diversity has not significantly reduced programming/format diversity.

In 1996, Congress enacted the Telecommunications Act of 1996 (the “1996 Act”) which has allowed for substantial consolidation in the radio industry.¹⁷ Yet this outlet consolidation has not resulted in significantly less programming diversity in local markets. A 2001 study found that even where the number of owners in a market has been reduced, there has been an increase in the number of formats in that market.¹⁸ Further, the FCC’s more recent *Working Group Study 9*, which focused on radio station playlists in larger markets, found that, although diversity of songs across same-format stations decreased slightly between 1996 and 2001, on average, there remains significant variety in the top-10 songs played on these same format stations.¹⁹ Essentially, however, the study concludes that consolidation has had very little impact on playlist diversity for the stations studied.²⁰

Although radio and television ownership in a market are not precisely analogous, there is even less likelihood of program duplication under a consolidated operation in the

¹⁷ Under the 1996 Act, a single owner of radio stations can own an unlimited number of stations on a national basis and can own between 5-8 stations in any given radio market depending on the size of the market. *1996 Act* §202.

¹⁸ *Radio Market Structure and Music Diversity*, by George Williams, Keith Brown and Peter Alexander, September 2002 (“Working Group Study 9”) at p. 4.

¹⁹ *Id.* at pp. 10-11.

²⁰ *Id.* at p. 18.

television industry than in the radio industry because networks generally do not provide affiliation to more than one station in the same market. Thus, it is exceedingly unlikely that a reduction of owners to allow one owner of two television stations in a local market will affect viewpoint or programming diversity.

3. Source Diversity.

As with outlet diversity, relaxation of the Local TV Multiple Ownership Rule to allow common ownership of two television stations in a market will not overly reduce source diversity in a market because there will be only limited change to the number of content producers in the market. For example, although Nexstar owns WJET-TV in Erie, Pennsylvania and programs WFXP, Erie, pursuant to a time brokerage agreement, the content on each station is predominantly provided by the stations' respective networks (ABC and FOX) and syndicated programmers. Therefore, the only reduction in source diversity would be with respect to locally-produced programming. And as with outlet diversity, even if one owner owns two stations, there will remain numerous other sources and producers of local programming, including radio, newspapers and other television stations. Moreover, as previously stated, even as the sole "source" of local news content on two stations, Nexstar and Quorum generally provide different programming content for their non-owned stations.

4. Program Diversity.

Relaxation of the Local TV Multiple Ownership Rule will only minimally, if at all, affect programming diversity. As stated above, the programming broadcast on the second stations generally is different as a function of separate network affiliations and selections of syndicated programming. In every case, the non-owned station is affiliated

with a different network than the owned station. There is no incentive for Nexstar, Quorum or any other broadcaster to reduce programming choices. To do so would be counter-productive and only would reduce viewership of its first station, driving viewers looking for alternative programming to a competitor.

For example, when Nexstar acquired television stations WCIA, Champaign, Illinois and WCFN, Springfield, Illinois in January 2001, WCFN was operating as a satellite of WCIA. However, in its application for consent to the assignment of licenses, Nexstar demonstrated that it could own and separately operate both stations in compliance with the Local TV Multiple Ownership Rule. After the Commission granted Nexstar consent to own both stations without operating WCFN as a satellite station, Nexstar requested consent to upgrade WCFN's facilities and then worked with Viacom to obtain a UPN affiliation so that WCFN would no longer broadcast duplicative programming to the Champaign-Springfield-Decatur market. Thus, duopoly resulted in an increase in programming diversity in this DMA.

As shown above, the current Local TV Multiple Ownership Rule is not necessary for the protection of the Commission's diversity goals. Indeed, if Nexstar's and Quorum's experiences are any indicator, relaxation of the rule to allow dual station ownership in a market likely will lead to greater diversity in many markets. Nexstar and Quorum urge the Commission to remember that the same owner can, and likely will, provide viewpoint and programming diversity across the stations it owns and that common ownership of two stations in medium and small markets will not reduce the number of outlets available in such markets. Accordingly, Nexstar and Quorum urge the Commission to relax the Local TV Multiple Ownership Rule to allow ownership of two

television stations by the same owner in one market, so long as there are four or more stations in the market. Such action can be taken without compromising diversity.

B. Competition.

The Commission also seeks comment on whether it should continue to maintain a competition policy goal and, if so, what its competition policy goal(s) should be and whether the Local TV Multiple Ownership Rule is needed to achieve such goals. The Commission further asks whether it should specifically analyze the competitive nature of a market and states that, with respect to competition, it is concerned with the markets of delivered programming (i.e., viewers' ability to choose programming), advertising and programming.

Television viewers are well-served with many programming choices and these choices will not be reduced by allowing common ownership of two TV stations in a given market. As the Commission already appreciates, viewers may choose from radio and television stations, cable systems (which provide access to a plethora of programming) and DBS (which provides access to a minimum of 70 or 110 channels depending on provider). Viewers also can obtain programming from videos, DVDs, CDs and the Internet. In addition to readily available home-delivered programming, viewers can choose to attend movies, theaters, symphonies, opera, concerts and sporting events.²¹ Moreover, as stated above, there is no incentive for a single owner to broadcast duplicative programming on two stations; to do so would frustrate the model that created these arrangements. Even with relaxation of the Local TV Multiple Ownership Rule,

²¹ Any analysis of programming choice availability must recognize that all of these entertainment options are programming "choices" because all of these options are in competition with television broadcasters for a viewer's use of time. For example, video games are significant competitors to over-the-air television, especially among younger viewers.

viewers will continue to have ample programming and other entertainment choices available to them.

Nexstar and Quorum also urge that the Commission not use its rules to regulate competition in support of advertisers and programming providers in local markets. Such protection does not serve the public interest and raises unnecessary concern about protecting strong and viable industries (billion dollar industries in their own right) at the expense of the local community.²² The Commission should leave “competition analysis” to the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”), who routinely perform such analysis pursuant to their antitrust obligations.

The current Local TV Multiple Ownership Rule is a bright-line standard that does not adequately account for the strength of competition in a market before or after a merger; rather, it simply imposes a mechanical and arbitrary limit to determine whether or not a market is competitive. For example, the current rule does not recognize and account for the anomaly in the Wilkes-Barre-Scranton DMA that one television station, WNEP-TV, owned by the New York Times, historically has dominated all other stations in local news. In the recently completed November 2002 ratings period, WNEP-TV’s share of households substantially exceeded those of its competitors for all news periods. For the 6:00 a.m. news, WNEP-TV’s ratings share is 54, while WBRE-TV’s is 9 and WYOU’s is 5; at noon, WNEP-TV’s ratings share is 37 while WBRE-TV’s is 10 and WYOU’s is 14; at 5:00 p.m., WNEP-TV’s ratings share is 32 while WBRE-TV’s is 13 and WYOU’s is 9; at 6:00 p.m., WNEP-TV’s ratings share is 42 while WBRE-TV’s is

²² Nexstar and Quorum question whether the Commission has authority to regulate the television industry solely to protect advertisers’ ability to achieve lower rates. Nothing in the Communications Act of 1934, as amended, purports to give the Commission such authority.

12 and WYOU's is 5; and for the 11:00 p.m. news, WNEP-TV's ratings share is 34 while WBRE-TV's is 15 and WYOU's is 7.²³ As these ratings show, complete merger of WBRE and WYOU would still not result in a combined ratings as high as those of WNEP.

Quorum and Nexstar believe it is inappropriate for the Commission to maintain an arbitrary and mechanical limit which does not adequately account for the specific factors relevant to a given market, particularly when the Commission can eliminate this arbitrary and mechanical rule without worrying about loss of competition. Indeed, even without the Local TV Multiple Ownership Rule three other Federal laws (enforced by DOJ and FTC) will continue to proscribe anti-competitive mergers.²⁴

Nexstar and Quorum believe the best approach for determining whether one owner can own multiple stations in a market is through DOJ/FTC review pursuant to the 1992 Horizontal Merger Guidelines.²⁵ These jointly issued guidelines define competition in practical terms and mandate a look at all of the relevant evidence instead of focusing on a single arbitrary statistic such as how many stations will remain in the market after a merger. Using these guidelines, DOJ and FTC are in the best position to determine whether elimination of a single competitor in the market will have adverse consequences on the local market. Indeed, DOJ and FTC have significant experience in reviewing the

²³ Statistics are from TAPSCAN, Inc., as obtained Dec. 13, 2002.

²⁴ See 15 U.S.C. §1 (Section 1 of the Sherman Act); 15 U.S.C. §45 (Section 5 of the Federal Trade Commission Act); and 15 U.S.C. §18 (Section 7 of the Clayton Act).

²⁵ U.S. Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines (1992) (with April 8, 1997 revisions to Section 4 on efficiencies), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1997). Under the Merger Guidelines the government is first required to determine the relevant geographic and product markets and then determine whether the elimination of a competitor will give the merged entity market power. This analysis also looks at the efficiencies a merger will generate and accounts for them in determining whether any merger is pro-competitive.

competitive aspects of media mergers having participated in numerous FCC merger proceedings over the last several years.

In addition, the public interest is not served by the Commission's paternalistic protection of the programming and advertising industries through the maintenance of an arbitrary and unnecessary rule. For example, although the Commission expresses concern that, if one owner owns multiple stations in a market, a programming provider may be forced to sell its programming in that market at great discount, such a situation is highly unlikely because an owner of more than one television station in a market must still obtain quality programming for both of its outlets, which gives a programmer leverage with that owner. Likewise, the provider can approach stations owned by others because nothing restricts it to approaching only the duopoly owner. Accordingly, the Commission need not protect the programming industry with rules which set arbitrary, mechanical limits on how many station owners there must be in any given market.

Cable TV is definitely another source of distribution for programmers, even on the local level. For example, Warner Brothers created "The WEB," a series of "turn-key" local cable channels, especially designed for the 100 plus markets. Many of the programs distributed through "The WEB" were not even made available to over-the-air stations in these markets. For example, Quorum and Nexstar did not even have the chance to bid on *Friends* for its stations outside the top-100 markets until the program already had been available to cable systems in those markets for two years. Against this kind of competition, it makes no sense to protect programmers' markets by preventing one company from owning two stations in a market.

With respect to whether the Commission needs to protect the advertising industry, the Commission's own studies establish that the advertising industry does not need the protection of an artificial rule such as the Local TV Multiple Ownership Rule because advertisers are protected by both consumer substitution among media, including newspapers, broadcast television, radio, the Internet and cable television, for information and the advertisers' ability to substitute among such media. As one of the Commission's studies establishes, consumers will and do obtain information from a variety of sources.²⁶ The study provides clear evidence that consumers substitute between the Internet and broadcast television as well as between daily newspapers and broadcast television to obtain information.²⁷ There is also evidence that consumers substitute between cable and daily newspapers and between radio and television for news.²⁸ Accordingly, advertisers can utilize all of these media outlets to reach consumers fairly easily and, therefore, do not need the protection of an artificial rule to ensure that they adequately are able to reach consumers. Furthermore, the Commission study focusing on substitutability of local newspaper, radio and television advertising by local businesses confirms that local businesses substitute between newspaper and local radio and newspaper and local TV in placement of advertising.²⁹

Finally, the Commission asks whether it is required to protect competition in order to ensure innovation. Innovation is more likely to occur when an owner owns more

²⁶ *Consumer Substitution Among Media*, by Joel Waldfogel, September 2002.

²⁷ *Id.* at p. 3.

²⁸ *Id.*

²⁹ *On the Substitutability of Local Newspaper, Radio and Television Advertising in Local Business Sales*, by C. Anthony Bush, September 2002, at p. 12.

than one station. For example, in several of Nexstar's and Quorum's markets, the cost-savings generated through their various agreements with other stations have allowed for technical innovation such as the purchase of a doppler weather radar system for more accurate weather predications or a satellite uplink truck to produce more live local coverage. Based on their experiences, Quorum and Nexstar believe that innovation occurs with station owners when there is sufficient money available for expenditure on items outside of the bare necessities and when the efficiencies of joint ownership can be channeled into the ability to purchase new and innovative news, weather, control and programming equipment to better serve viewers, and retain talented, creative employees. Accordingly, Quorum and Nexstar believe it is highly likely that relaxation of the Local TV Multiple Ownership Rule will inspire, rather than hinder, innovation.

C. Localism.

Localism is the Commission's policy of fostering programming that meets a local community's needs and interests. Broadcasters fulfill this goal by providing local news and public affairs programming and selecting programming that meets the needs and interests of the community. The Commission seeks comment on whether and how the Local TV Multiple Ownership Rule affects localism. A broadcaster's actions to meet the policy of localism are entirely unrelated to ownership and may be enforced through the Commission's review at license renewal time of whether a licensee has met its community's needs.³⁰

³⁰ Section 307(c) of the Communications Act states "upon application . . . a renewal of . . . license may be granted . . . if the Commission finds that public interest, convenience, and necessity would be served thereby." 47 U.S.C. § 307(c). Accordingly, if a broadcaster is not meeting its community's interests, the Commission can initiate a proceeding to revoke the station's license.

If the Commission relaxes the Local TV Multiple Ownership Rule, news and public affairs programming will remain available and probably will increase on television stations. As Nexstar and Quorum previously have stated, they have been able to increase the amount of news and public affairs programming available in most of their markets through shared production; there is no incentive to eliminate news and public affairs programming because this is the type of programming that attracts viewers to the station. Indeed, allowing one owner to own two stations in a market may improve quantity and quality.³¹ Although they do not have empirical information available, Quorum and Nexstar believe that news quality has improved on many other stations currently operating pursuant to duopolies or with sharing arrangements. Nexstar and Quorum believe it is doubtful that the partnered stations in their markets (and numerous others) would provide any or as much news without these arrangements.³²

Moreover, local programming and, therefore, localism are supported on cable channels on the PEG and leased access channels that cable systems are required to maintain pursuant to Sections 611 and 612 of the Communications Act, 47 U.S.C. §§ 531-32. In addition, cable systems have begun to carry local news channels such as Newschannel 8 in the Washington, D.C. area, which provides information and news of

³¹ The Commission apparently considers news to be of “high” quality if it has won awards “from leading professional and community organizations.” *NPRM* at ¶ 96. Accordingly, Nexstar notes that its station WMBD (operating with Sinclair’s station WYZZ under an outsourcing agreement in Peoria) was runner-up in 2001 for the Illinois Broadcasters Association “Best Newscast” category, while one of its news anchors received the Association’s News Anchor of the Year Award and a second anchor placed third in this category. And Nexstar’s station WBRE-TV (operating with Mission’s station WYOU under a shared services agreement) received the Pennsylvania Association of Broadcasters award for Best News Special Report.

³² As the Commission acknowledged, this has been the experience of CBS. The *NPRM* observes that Viacom’s President and Chief Operating Officer testified before Congress that CBS has (or planned to have) news programming on stations that had not previously broadcast such programming. *NPRM* at ¶ 95.

local interest. For example, Comcast has added CN8 to its Philadelphia lineup and Cablevision has News 12 in Bridgeport, New Haven and Norwalk, Connecticut and New York 1 News on its Bronx and Brooklyn systems. Cable and DBS providers also broadcast local weather programming through the Weather Channel and localized weather channels such as Comcast's WeatherScan local channels. Accordingly, Nexstar and Quorum urge the Commission to recognize that localism is and will continue to be supported by broadcasters even with relaxation of the Local TV Multiple Ownership Rule.

III. OWNERSHIP OF MORE THAN ONE TELEVISION STATION IN A MARKET PRODUCES SUBSTANTIAL PUBLIC INTEREST BENEFITS.

If the FCC relaxes the Local TV Multiple Ownership Rule, the public will benefit. The significant efficiencies inherent in joint ownership and operation of television stations in the same market include efficiencies related to the co-location and sharing of studio and office facilities, the sharing of administrative and technical staff, and efficiencies in advertising, sales and newsgathering. These efficiencies lead to increased news and public affairs programming and improved entertainment programming. As Nexstar and Quorum have demonstrated, the cooperation of their stations with other in-market stations has generated efficiencies and economies of scale which have resulted in improved performance by all of the involved stations and more diversity of viewpoints available to viewers. In fact, such efficiencies and public service benefits are particularly essential to medium and small market broadcasters, allowing them to maintain economic viability in difficult years. But broadcasters such as Nexstar and Quorum cannot maximize such efficiencies unless they actually own both stations. Relaxation of the

Local TV Multiple Ownership Rule will strengthen the ability of medium and small market TV broadcasters to compete effectively with other services, including cable and DBS, without harming the Commission's policy goals.

Nexstar and Quorum also believe that the efficiencies and savings generated through relaxation of the Local TV Multiple Ownership Rule to allow common ownership of two television stations in a market are essential to speed the transition to digital television in medium and small markets. For instance, in the Los Angeles market, full conversion of a station to DTV operations costs approximately \$5 million dollars, which is only one-two-hundredth ($1/200^{\text{th}}$) of that market's annual \$1 billion advertising revenues. Accordingly, full DTV conversion should not heavily impact a Los Angeles station's ability to provide quality local programming or even remain viable. However, in a market such as Billings, Montana, where Quorum owns a station, annual advertising revenues are much less, approximately \$10 million. Even if full conversion in this size market would cost as little as \$2.5 million, the impact on TV owners in this size market is much greater -- full conversion would require 25 percent of the entire market's annual advertising revenues. Without the savings generated through the efficiencies of dual station ownership, converting to full power digital operations in medium and small markets likely will take several years as stations scramble to accumulate the funding required for conversion while maintaining the station's ability to broadcast quality programming and hire qualified employees.

Although Nexstar and Quorum have achieved some efficiencies of common ownership through their various agreements, they urge the Commission to relax the Local TV Multiple Ownership Rule to allow common ownership of two television stations in

all markets where there are four commercial television stations. Both Nexstar and Quorum are in relationships with second stations under grandfathered time brokerage agreements, which may become attributable after the 2004 biennial review (and their current agreements may be considered for attribution at that time). In addition, although Nexstar and Quorum have achieved some cost savings under their current arrangements with other stations in their markets, common ownership will achieve even greater efficiencies, such as from utilization of totally-combined physical facilities and joint purchasing. These savings are critically important in medium and small markets to ensure the economic viability of stations and their ability to convert to full digital facilities and provide diverse programming benefits to the public.

IV. CONCLUSION.

WHEREFORE, for the foregoing reasons, Nexstar and Quorum respectfully urge the Commission to relax the Local TV Multiple Ownership Rule to allow common ownership of two commercial TV stations in all markets where there are four or more such stations.

Respectfully submitted,

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APPENDIX A

NEXSTAR

➤ **Peoria-Bloomington, Illinois:** Nexstar and Sinclair Broadcast Group, Inc. have an outsourcing agreement in place between Nexstar's station WMBD-TV and Sinclair's station WYZZ under which the parties have (i) started the market's only 9:00 p.m. news, on WYZZ; (ii) tripled the news coverage in Bloomington, Illinois from one crew to three crews; and (iii) provided up-to-the-minute election returns on WYZZ.

In addition, WYZZ now covers community events via live remotes and the stations simulcast severe weather and breaking news alerts (reaching a far wider audience). The stations jointly participate in or promote community events such as the Toys for Tots drive (benefiting underprivileged children) and the Relay For Life (benefiting the American Cancer Society) strengthening viewer participation throughout the DMA for both events.

➤ **Joplin, Missouri-Pittsburg, Kansas:** Nexstar and Mission Broadcasting, Inc. ("Mission") have a shared services agreement in place between Nexstar's station KSNF and Mission's station KODE-TV under which the parties have (i) increased news coverage in the market; (ii) produced and aired the Missouri Southern University Football Coaches Show, which had not been broadcast for more than four years; and (iii) resurrected "OUR KIDS," a locally-produced public service campaign promoting the general well-being of children in the Four State area.

In addition, KODE-TV introduced a "Toys for Kids" campaign.

➤ **Wichita Falls, Texas-Lawton, Oklahoma:** Nexstar and Mission have a shared services agreement in place between Nexstar's station KFDX-TV and Mission stations KJTL and KJBO-LP under which the parties have initiated live local church services on a weekly basis.

In addition, KJTL is now a joint partner with KFDX in several community events including Race for the Cure (raising funding for and awareness about breast cancer); City of Lights Holiday Festival (community parade); Alzheimer Association Walk (raising funding for and awareness about Alzheimer's disease); Kids Fest (an annual community event for kids providing entertainment and education); Heart Ball and Walk (raising awareness about heart disease); Leukemia Light the Night Project (raising funds for and awareness about Leukemia); and Toys for Tots (soliciting toys for underprivileged children). Because of this partnership, community participation has increased.

KJTL also now offers a Child Identification Program which has produced more than 2,000 child identification cards for local children. And KJTL now participates in the

semi-annual community Job Fair that provides a forum for our business community to meet and interview potential job force members.

➤ **Erie, Pennsylvania:** Nexstar and Mission have a time brokerage agreement in place between Nexstar's station WJET-TV and Mission's station WFXP under which the parties have (i) improved the 10 p.m. weekday newscasts on WFXP; (ii) televised a local high school championship football game on WFXP; and (iii) allowed WFXP's weather reporting to benefit from WJET-TV's weather radar station, providing for enhanced weather coverage for WFXP's viewers.

In addition, WFXP has been able to sponsor several community outreach programs, including the Jingle Bell Run (benefiting the Arthritis Foundation); Toys for Tots (in partnership with WJET-TV, benefiting under privileged children at Christmas); the Paws on Presque Isle Walk (benefiting the Erie Country Humane Society); a Veterans' Day Salute (providing free meals for all veterans at Golden Corral restaurant); Great Vein Drain (Halloween) Blood Drive (benefiting the Erie Country Blood Bank) and Wendy's Valentines (benefiting Erie Country Family Services, Crawford County CASA Adoption Program and Family First Sports Park outreach programs).

➤ **Wilkes-Barre-Scranton, Pennsylvania:** Nexstar and Mission have a shared services agreement in place between Nexstar's station WBRE-TV and Mission's station WYOU under which the parties have (i) increased the amount of news coverage available on both stations; (ii) increased coverage of local news events, including live events, through the sharing of equipment and personnel; and (iii) initiated the program *Sunday Live with Jim McNulty*, which focuses on community and political issues.

In addition, WBRE-TV uses the WYOU main studio as the Scranton news bureau for both stations. WYOU has produced the Lackawanna County Armed Forces Veterans Parade for the past two years and was able to broadcast three debates between gubernatorial candidates in 2002.

WYOU is a sponsor of community programs, including the Children's Miracle Network Telethon (which in June 2002 raised more than \$1.5 million to support area pediatric services); WYOU Dollars Into Diamonds (raising funding for improving local youth baseball fields); Scranton Community Concerts (raising awareness about and support for the arts and cultural events in the area); Scranton Civic Ballet (presentation of the Nutcracker); and Everhart Museum (promoting various events throughout the year to increase community support).

QUORUM

➤ **Billings, Montana:** Quorum and VHR Broadcasting, Inc. (“VHR”) have a time brokerage agreement in place between Quorum’s station KSVI and VHR’s station KHMT under which the parties have (i) launched weekday 5:00 p.m., 6:00 p.m. and 10:00 p.m. newscasts on KSVI as well as 10:00 p.m. newscasts on weekends and (ii) launched 9:00 p.m. newscasts on KHMT.

Quorum notes that the 9:00 p.m. newscast on KHMT is the only over-the-air news reaching several Native American reservations in the Billings DMA.

KHMT also now is a sponsor of several community programs, including the Cystic Fibrosis Foundation; the March of Dimes; and Alberta Bair Theater. With KHMT participating in these programs, more of the community is aware of and participates in these events.

➤ **Lubbock, Texas:** Quorum and VHR have a shared services agreement between Quorum’s station KLBK-TV and VHR’s station KAMC-TV under which the parties have shifted more resources to reporting and producing local news thereby (i) increasing the amount of news coverage available on both stations; (ii) increasing the number of reporter/photographer teams in the field; and (iii) increasing the quality of the local news through the use of higher-end equipment not normally purchased for smaller market stations.

Likewise, KLBK-TV and KAMC-TV both are better able to provide advanced weather coverage, including better severe weather warnings – a key benefit in the heart of “Tornado Alley.” Under the shared services agreement, the parties are able to afford a real-time doppler radar and an increased number of meteorologists thereby provides viewers of both stations with access to dangerous weather condition updates, including warnings that can save lives.

The shared services agreement has further enhanced both stations’ ability to participate in community service projects, including Toys for Tots, Habitat for Humanity, the Lubbock Junior League Play Village and Meals on Wheels. These programs have been significantly improved through the participation of both stations.

➤ **Amarillo, Texas:** Quorum and Mission Broadcasting of Amarillo, Inc. have a shared services agreement between Quorum’s station KAMR-TV and Mission’s station KCIT under which the parties initiated (i) 9:00 p.m. newscasts on KCIT; (ii) the broadcast of live local church services every Sunday on KCIT; (iii) improved breaking news and weather alerts on KCIT; (iv) carriage of Texas Tech men’s and women’s basketball; and (v) a weekly one-hour high school football highlight program which covers thirty local games and provides scores from the area and around the state.

In addition, both stations partner with local radio stations for daily news and weather updates. Both stations also broadcast Amber alerts to the viewing area.

➤ **Springfield, Missouri:** Quorum and VHR have a shared services agreement between Quorum's station KDEB-TV and VHR's station KOLR under which the parties have (i) initiated 9:00 p.m. newscasts on KDEB-TV while a competitor is eliminating newscasts and (ii) increased capital investment in weather technology in order to provide better severe weather warnings. (Quorum notes the Greene County Emergency Management Office utilizes its doppler radar.)